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VIA HAND DELIVERY

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *BellSouth Telecommunications, Inc.'s Tariff Filing to Reduce Grouping
Rates in Rate Group 5 and to Implement a 3% Late Charge*
Docket No. 00-00041

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of the Reply of BellSouth Telecommunications, Inc. to the CAD's Briefed Issues. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

Guy M. Hicks

GMH/jem

Enclosure

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *BellSouth Telecommunications, Inc.'s Tariff Filing to Reduce Grouping
Rates in Rate Group 5 and to Implement a 3% Late Charge*

Docket No. 00-00041

REPLY OF BELL SOUTH TELECOMMUNICATIONS, INC.
TO THE CAD'S BRIEFED ISSUES

In compliance with the Pre-Hearing Officer's instructions during the May 16, 2000 Pre-Hearing Conference in this Docket, BellSouth respectfully submits this Reply to the CAD's Briefed Issues. This brief explains that: (1) the CAD's estoppel and res judicata arguments are without merit; and (2) the TRA can – and should – approve a tariff that applies a late payment charge to all amounts appearing on BellSouth's bills, including amounts for services provided by third parties.

I. THE CAD'S ESTOPPEL AND RES JUDICATA ARGUMENTS ARE WITHOUT MERIT

The CAD argues that BellSouth is "estopped from arguing that the recurring and nonrecurring charges included in basic local exchange rates are not appropriate, or are unaffordable or unjust or unreasonable or alternatively res adjudicata (sic) applies because BellSouth successfully fought to prevent any more accurate ascertainment." See CAD's Briefed Issues at 7. This argument, however, simply does not apply to BellSouth's proposed tariff. As explained at pages 2 through 5 of BellSouth's initial brief, BellSouth's proposed late payment charge will

not result in an increase in either recurring or nonrecurring initial basic local exchange telephone service rates.

Persons who receive basic residential telephone services, for instance, will be billed the same rates for those services after the implementation of the late payment charge as they were billed for those services before the implementation of the late payment charge. Moreover, if they pay their bills on time, customers will never be affected by the late payment charge. The late payment charge will only affect customers who order services, receive the benefit of those services, and cause BellSouth to incur additional costs by failing to pay for those services in a timely manner. In this regard, the proposed late payment charge is analogous to BellSouth's tariff at issue in Docket No. 96-01422 (the five-line tariff). Just as the five-line tariff did not constitute a basic rate increase, the proposed late payment charge does not constitute a basic rate increase.

Additionally, as explained at pages 10 through 16 of BellSouth's initial brief, BellSouth's rates on the effective date of its approved price regulation plan are affordable¹ as a matter of law. See T.C.A. §65-5-209(a). Moreover, BellSouth's rates continue to be affordable -- and, therefore, just and reasonable -- as long as they generate aggregate revenues that "do not exceed the aggregate revenues generated by the maximum rates permitted by the price regulation plan." T.C.A.

¹ Because these rates are affordable, they are also just and reasonable. See T.C.A. §65-5-209(a) ("Rates for telecommunications services are just and reasonable when they are determined to be affordable as set forth in this section.").

§65-5-209(e). BellSouth's proposed late payment charge, combined with the accompanying hunting rate reductions, results in aggregate revenues that are less than the aggregate revenues generated by the maximum rates permitted by BellSouth's price regulation plan. BellSouth's rates, therefore, continue to be just, reasonable, and affordable, and the CAD's attempts to divert attention from this simple fact by reminiscing about rate of return proceedings conducted in bygone years are improper. *See BellSouth Telecom., Inc. v. Greer*, 972 S.W.2d 663, 681-82 (Tenn. Ct. App. 1997)(summarily rejecting AT&T's argument that in auditing BellSouth's 3.01 report under T.C.A. §65-5-209(c) and (j), the Public Service Commission "did not complete its task because it failed to review each of BellSouth's rates and tariffs to determine whether they were affordable and non-discriminatory.").

II. THE TRA CAN -- AND SHOULD -- APPROVE A TARIFF THAT APPLIES A LATE PAYMENT CHARGE TO ALL AMOUNTS APPEARING ON BELLSOUTH'S BILL, INCLUDING AMOUNTS FOR SERVICES PROVIDED BY THIRD PARTIES.

When BellSouth bills its end users for services provided by third parties,² BellSouth pays those third parties up front. When BellSouth bills on behalf of an

² The CAD asserts that BellSouth bills on behalf of resellers of BellSouth's services, and it launches an attack on BellSouth's proposed tariff on the basis of this assertion. *See* CAD's Briefed Issues at 14-15. This assertion, however, is simply wrong – BellSouth does not bill on behalf of resellers of BellSouth's services. Resellers of BellSouth's services purchase those services from BellSouth at wholesale rates, which have been determined on the basis of BellSouth's retail rates "excluding the portion thereof attributable to any marketing, billing, collection, and other cost that will be avoided by the local exchange carrier." *See* 47 U.S.C. §252(d)(3). Costs associated with billing and collection functions are

interexchange carrier under section E8 of its Tennessee Access Services Tariff ("Access Tariff"), for example, BellSouth purchases the accounts receivable from the carrier. See Access Tariff at E8.2.1.B.2.g; BellSouth's Response to CAD's Data Request No. 42. Similarly, when BellSouth bills on behalf of an enhanced or information service provider under section A37 of its General Subscriber Services Tariff ("GSST"), BellSouth pays the service provider the amount of charges it sends to BellSouth for inclusion on an end-user's bill. See GSST at A37.1.1.B. If these charges later prove to be uncollectible, or if they are later adjusted, BellSouth deducts these uncollectible or adjusted amounts from future payments to the service provider. *Id.* Thus, as the tariff expressly states, "[t]ypically, [BellSouth] will be paying out the billed amount to the [service provider] prior to receiving payment from the end user." GSST at A37.1.2.E.

Accordingly, when an end user makes a late payment, it is BellSouth (not the service provider) that suffers -- the service provider has already received payment from BellSouth, and BellSouth is denied the use of payments it would have received had the end user paid its bill on time.³ Moreover, it is BellSouth (not the service provider) that sends notices of delinquent or unpaid end user accounts and incurs

avoidable precisely because it is the reseller -- not BellSouth -- that performs these functions.

³ Because the service provider has already been paid by BellSouth, it clearly has no reason to impose a late payment fee on the end user. In fact, the service provider likely does not know and does not care if the end user actually pays BellSouth on time. The CAD's concerns that the end user will be faced with a late payment charge imposed by both the service provider and by BellSouth, therefore, is simply unfounded. See CAD's Briefed Issues at 13.

other costs as a result of late payments.⁴ In recognition of these facts, major interexchange carriers have filed tariffs providing that when a local exchange company bills for the carrier, the local exchange company's late payment charge applies to the past due amounts. AT&T's Tennessee tariff, for example, applies a late payment charge to "all amounts previously billed on a Customer's bill," but it expressly states that "[w]hen a local exchange company provides the billing function on behalf of [AT&T], the local exchange company's late payment charge applies." See AT&T's Tennessee General Services Tariff A2.4.3.G. Similarly, Sprint's Tennessee Tariff provides that "[s]ubscribers billed by a local exchange company (LEC) on behalf of [Sprint] are responsible for any late-payment charges that the LEC may employ in its billing process." See Sprint Tennessee Tariff P.S.C. No. 3, §3.8.2. Thus it is appropriate for BellSouth to recover the costs it incurs as a result of late payments by applying late payment charges to amounts it bills on behalf of third parties.

Moreover, the TRA has the authority to approve a tariff allowing BellSouth to apply late payment charges to all amounts it bills. The TRA has general jurisdiction over public utilities like BellSouth, and it has the authority to approve tariffs that are binding on BellSouth and its customers. See *GBM Communications, Inc. v. United Inter-Mountain Tel. Co.*, 723 S.W.2d 109, 112 (Tenn. Ct. App. 1986) ("The

⁴ Obviously, the CAD's assertions that "BellSouth does not bear any risk or expense when end users pay late or do not pay their bill at all" and that BellSouth "incurs no service costs" in such situations is simply wrong. See CAD's Briefed Issues at 14.

published tariffs of a common carrier are binding upon the carrier and its customers and have the effect of law. The provisions of the tariffs should govern the parties."). Thus the TRA has the authority to approve tariffs governing the manner in which BellSouth's end users must pay their bills, *see* BellSouth's Tennessee General Subscriber Services Tariff at A2.4.3 ("Payment for Service"), and this authority extends to third party charges appearing on BellSouth's bills.

Local exchange companies, for example, are authorized to require deposits which are, in whole or in part, based on charges for toll services that are provided by other companies. *See, e.g.,* BellSouth Tennessee General Subscriber Services Tariff A2.4.2.A (permitting deposits in an amount "equal either to the charge for two months' local service or the charge for the estimated toll messages during a like period, or both."). Moreover, the "Regulations for Telephone Companies" provide that "[s]ervice may be refused or discontinued . . . for non-payment of bill," Rule 1220-4-2-.12(1)(e), and local service may be disconnected even for non-payment of certain amounts billed on behalf of third parties. *See, e.g.,* United Telephone-Southeast's General Subscriber Services Tariff U2.2.10.c.2 (Allowing the suspension, termination, or disconnection of local service for "[n]on-payment of any sum due for exchange, long distance or other services, except for '900' services."). BellSouth's Tennessee General Subscriber Services Tariff A2.2.10.A.5 (allowing the suspension, termination, or disconnection of local exchange services for non-payment of charges for long distance service). Permitting a local exchange company to take certain actions on the basis of an end user's failure to pay third

party charges appearing on its local bill, therefore, is hardly a novel concept. Thus the CAD's assertion that the TRA may not approve a tariff allowing BellSouth to apply late payment charges on amounts it bills on behalf of third parties is simply wrong.

Finally, BellSouth bills for services provided by a third party only if the end user is a BellSouth subscriber who receives a monthly telephone bill from BellSouth. *See, e.g.*, GSST A37.1.1.A. Additionally, end users are aware of the fact that the charges for the services provided by these third parties will appear on their local telephone bills, *see, e.g.*, A37.1.4.E,⁵ and by virtue of BellSouth's proposed tariff, they are charged with the knowledge that a late payment charge will apply to any balance that remains unpaid by the next billing date. *See GBM Communications, Inc. v. United Inter-Mountain Tel. Co.*, 723 S.W.2d 109, 112 (Tenn. Ct. App. 1986) ("The published tariffs of a common carrier are binding upon the carrier and its customers and have the effect of law. The provisions of the tariffs should govern the parties."). Additionally, before applying the late payment charge to any end user's unpaid balance, BellSouth plans to place a message on its

⁵ *See also* AT&T's Tennessee General Services Tariff A2.4.3.G. (applying a late payment charge to "all amounts previously billed on a Customer's bill," but expressly stating that "[w]hen a local exchange company provides the billing function on behalf of [AT&T], the local exchange company's late payment charge applies."); Sprint Tennessee Tariff P.S.C. No. 3, §3.8.2. ("Subscribers billed by a local exchange company (LEC) on behalf of [Sprint] are responsible for any late-payment charges that the LEC may employ in its billing process."). As the CAD acknowledges, end users benefit from having these charges appear on their local bill because they have to pay one bill instead of several. *See* CAD's Briefed Issues at 12.

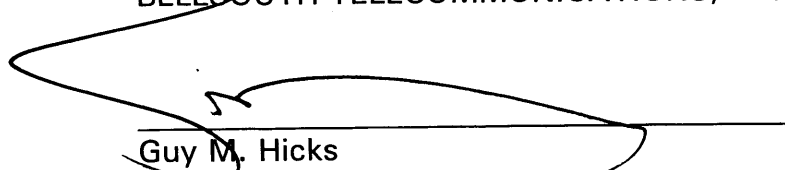
bills which will notify its customers of the date after which BellSouth will begin applying the late payment charge to unpaid balances.⁶ Thus BellSouth's end users will be notified of the pending application of the late payment charge to amounts BellSouth bills on behalf of third parties, and customers who wish to avoid having the tariffed late payment charge applied to these third-party charges may either pay their bills on time or request the service provider to bill them directly.

CONCLUSION

For the reasons stated above, the TRA should approve BellSouth's tariff.

Respectfully submitted,

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⁶ This is analogous to "terms and conditions" notices by which credit card companies and other unregulated entities establish or modify their late payment charges.

CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2000, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☒ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight

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- ☐ Hand
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A handwritten signature in black ink, appearing to be "L. Vincent Williams", written over a horizontal line.